



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

December 12, 2005

HAND DELIVERED

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

**Re: Comtel Telecom Assets LP & VarTec Telecom
Docket No. 2005-342-C
Our File No. 30123-0001**

Dear Mr. Terreni:

Enclosed for filing please find the Testimony of Jerry Ou on behalf of Comtel Telecom Assets LP. The company does not intend to use telemarketing in South Carolina; therefore, no sample scripts are included. Please date-stamp the extra copies of the testimony provided as proof of filing and return them with our courier.

If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy
Bonnie D. Shealy

/bds
Enclosure

cc/enc: Dan F. Arnett, Chief of Staff of ORS
Nanette S. Edwards, Staff Attorney ORS
Florence P. Belser, General Counsel ORS
Mr. Jerry Ou
Ms. Becky Gipson, Director, Regulatory Affairs (via email)
Ms. Daphne Dukes, PSC (via email)

177019

Bonnie D. Shealy

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

(803) 779-8900 | (803) 227-1102 *direct*

(803) 252-0724 | (803) 744-1551 *direct*

bshealy@robinsonlaw.com

RECEIVED
2005 DEC 12 AM 11:14
SC PUBLIC SERVICE
COMMISSION

OK D. Duke
OK D. Duke

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2005-342-C

In re: Application of)
COMTEL TELCOM ASSETS LP D/B/A)
VARTEC TELECOM,)
CLEAR CHOICE COMMUNICATIONS,)
EXCEL TELECOMMUNICATIONS AND)
VARTEC SOLUTIONS)
For a Certificate of Public Convenience)
And Necessity to Provide Local and Interexchange)
Telecommunications Services, for)
Flexible Regulatory Treatment, Alternative)
Regulation, and for Authority to Acquire)
Certain Assets of)
VARTEC TELECOM, INC.,)
EXCEL TELECOMMUNICATIONS, INC. AND)
VARTEC SOLUTIONS, INC.)

RECEIVED
2005 DEC 12 AM 11:14
SC PUBLIC SERVICE
COMMISSION

TESTIMONY OF JERRY OU

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. Jerry Ou

4 Comtel Telcom Assets LP

5 2440 Marsh Lane

6 Carrollton, Texas 75006

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed by Comtel Telcom Assets LP ("Comtel") as acting Chief Operations
9 Officer.

10 **Q. Please give a brief description of your background and experience in business
11 and telecommunications.**

12 A. I have been in the telecommunications industry for the last five years. I previously
13 worked with Simplified Development, the technology provider for Mercantel, as a senior
14 consultant focusing primarily on the Asian-American customer base. When serving as a
15 business strategist for Simplified Development, I helped secure initial investment funding
16 with venture capitalists. Most recently, I was one of the responsible parties involved in
17 creating the wholesale voice division at Dynegy, which led to the formation of Mercantel.
18 Prior to Simplified Development, I was a financial analyst with a subsidiary of Goldman
19 Sachs where I structured mezzanine finance deals that included, but were not limited to,
20 real estate bond offerings from JP Morgan and the Morgan Bank of Tokyo in addition to
21 managing real estate assets for Goldman Sachs and the Archon Group. I graduated
22 from Harvard University with an honors degree in Economics.

23 **Q. What is the purpose of your testimony?**

24 A. The purpose of my testimony is to describe the nature of Comtel's proposed service
25 offerings within the State of South Carolina, and to demonstrate its financial, managerial,
26 and technical ability to provide the telecommunications services for which authority is

sought herein. The purpose of my testimony is also to describe the proposed transaction whereby Comtel will purchase certain assets, including the customer base, of VarTec Telecom, Inc. ("VarTec") Excel Telecommunications, Inc. ("Excel") and VarTec Solutions, Inc. ("VarTec Solutions") (collectively, the "VarTec Companies").

Q. Do you intend to incorporate by reference any documents into your testimony?

A. Yes. I wish to incorporate by reference the underlying Application filed in this proceeding and its associated exhibits.

II. THE BUSINESS OF COMTEL

Q. Has Comtel registered to do business in South Carolina?

A. Yes. Comtel is a limited partnership organized in the State of Texas and has been authorized to transact business within the State of South Carolina. Copies of the qualifying documents are attached to the Application as Exhibits A and B.

Q. Please describe the services Comtel intends to provide within the State of South Carolina.

A. Comtel seeks authority to operate as a reseller of intrastate interexchange telecommunications services to the public on a statewide basis and to offer a full range of "1+" interexchange telecommunications services on a resale basis. Specifically, Comtel seeks authority to provide MTS, out-WATS, in-WATS, and calling card services to both business and residential customers. In addition, Comtel seeks to provide resold and facilities-based local exchange services.

Q. What carrier will Comtel utilize as its underlying carrier for services in South Carolina?

A. For local exchange services, Comtel will utilize the facilities of BellSouth for the provision of its services to customer. For interexchange services, Comtel will utilize various facilities-based interexchange service providers, based on availability and cost, as well

as local exchange companies in the provision of its services within South Carolina.

Q. Is Comtel currently authorized to provide intrastate telecommunications services in any other states?

A. Yes. Comtel is authorized to provide telecommunications services in the following jurisdictions: Colorado and Wisconsin. Comtel has also been granted a temporary license to provide local exchange services within Michigan. It is seeking such approval in other states required prior to the purchase of assets of the VarTec Companies.

Q. Does Comtel intend to file a tariff with the Commission?

A. Yes. Prior to consummation of the transaction with the VarTec Companies, Comtel intends to file the appropriate tariffs with the Commission.

Q. Will Comtel comply with the Commission's orders regarding the resale of interexchange and local exchange carrier services?

A. Yes. Comtel will at all times provide and market interexchange and local exchange carrier services in accordance with current Commission policies. In addition, Comtel at all times provides interstate services in compliance with all FCC rules and regulations.

Q. Has Comtel provided any intrastate telecommunications services within the State of South Carolina?

A. No. It has not.

Q. What rates will Comtel charge upon receipt of certification?

A. Comtel will charge the tariffed rates approved by the Commission for the VarTec Companies.

Q. How will Comtel market services in South Carolina?

A. Comtel will obtain its initial customer base through the transaction with the VarTec Companies. Subsequently, Comtel may utilize direct mail and other forms of marketing, such as direct sales. Comtel does not intend to utilize telemarketing in South Carolina.

1 **Q. What Regulatory Treatment is Comtel seeking in this Application for its long**
2 **distance business services, consumer card services, private line services and**
3 **operator assisted services offerings?**

4 A. Comtel requests that all of its business service offerings be regulated pursuant to the
5 procedures described and set out in Docket No. 95-661-C and as modified by Order No.
6 2001-997-C in docket No. 2000-407-C. It is Comtel's intent by this request to have its
7 long distance business services, consumer card services, future private line services,
8 and operator assisted services regulated in the same manner as this Commission has
9 permitted for by AT&T Communications of the Southern States. Specifically, Comtel
10 requests:

11 (a) removal of maximum rate tariff requirements for its business services,
12 consumer card, operator service, and future private line, and customer
13 network-type offerings;

14 (b) that tariff filings for these uncapped offerings are presumed valid upon
15 filing. If the Commission institutes an investigation of a particular filing
16 within seven days, the tariff filing will be suspended until further order of the
17 Commission; and

18 (c) any relaxation in the reporting requirements that may be adopted for AT&T
19 shall apply to Comtel also.

20 We understand that the alternative regulation orders were modified by Order No. 2001-
21 997 so that rate caps for operator-assisted calls where a consumer uses a local
22 exchange carrier's calling card to complete calls from locations which have not selected
23 that local exchange carrier as their toll provider. The order imposed a maximum cap of
24 \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the
25 flat per-minute rate associated with these calls.

26 **Q. What regulatory treatment is Comtel seeking for its local service offerings?**

1 A. We will be a non-dominant, competitive provider of local exchange telecommunications
2 services. Therefore, we request that the Commission regulate our company in the same
3 relaxed fashion authorized in Order No. 98-165 in Docket No. 97-467-C and extended to
4 other similarly situated carriers. We understand that this flexible regulatory treatment
5 requires that we file maximum rates for our service offerings. Local tariff filings would be
6 presumed valid once they are filed subject to the Commission's right to investigate the
7 filing within thirty days.

8 **Q. Will the service your company intends to provide meet the service standards of**
9 **the Commission?**

10 A. Yes. Comtel's services will meet the standards set forth by the Commission.

11 **Q. Will granting your application adversely impact the availability of affordable local**
12 **exchange service?**

13 A. No. Granting Comtel's application should improve the availability of affordable local
14 exchange service by stimulating increased competition in the telecommunications
15 market. More effective competition has the net economic impact of lower consumer
16 prices, combined with the introduction and availability of more consumer products and
17 services.

18 **Q. Will your company support universally available telephone service at affordable**
19 **rates as required by the Commission?**

20 A. Yes. Comtel will comply with Commission requirements.

21
22 **III. MANAGERIAL, TECHNICAL, AND FINANCIAL QUALIFICATIONS**

23 **Q. Does Comtel have sufficient managerial, technical, and financial resources and**
24 **ability to provide the telecommunications services proposed in its Application?**

25 A. Yes. As demonstrated in the Application and its exhibits, Comtel has the necessary
26 managerial, technical and financial resources as well as ability to provide the services
27 proposed therein.

28 **Q. How does Comtel handle customer service requests?**

1 A. Comtel intends to utilize most of the customer service processes and procedures
2 currently in use by the VarTec Companies. Comtel will accept customer inquiries and
3 requests through its toll-free customer service lines and/or through the mail. Processing
4 and implementing resolutions to customer requests will be done in a timely and equitable
5 manner. Customers may report service problems 24-hours a day via toll-free numbers,
6 and service problems will be handled according to severity by representatives trained to
7 resolve such issues.

8 **Q. Please describe the financial condition of Comtel.**

9 A. Applicant is financially qualified to provide telecommunications services within South
10 Carolina. As indicated above, the VarTec Companies are operating under bankruptcy
11 protection. Through the Court-approved auction process, Comtel will acquire
12 substantially all of the VarTec Companies' assets. Although Comtel and its partners are
13 new entities organized in July 2005, Comtel's financial position and outlook are strong.
14 Comtel does not intend to rely on its partners or its partners' investors for financial
15 support. Upon consummation of the transaction with the VarTec Companies, Comtel will
16 realize immediate profitability and will have sufficient funds and assets to operate its
17 business in South Carolina and elsewhere. From August 2005 through July 2006, the
18 VarTec Companies' assets are projected to produce \$17.1 million in net income and
19 accumulated cash flows of \$57 million. These financial results will be derived from an
20 optimized network architecture and efficient use of overhead coupled with stable and
21 growing revenue in certain areas of the business. Upon consummation of the
22 transaction, Comtel intends to finance working capital needs with a receivables-based
23 line of credit of up to \$50 million. Comtel has already received a proposal from Textron
24 Financial Corporation to fund the line of credit.
25 Furthermore, Comtel's business plan includes reselling and utilizing the facilities of other
26 companies. This plan allows Comtel to purchase access and transport on an as needed

1 basis with the opportunity for volume packaging and pricing but without the need for
2 permanent and costly infrastructure investments. Comtel's immediate profitability
3 combined with its business plan make Comtel financially qualified to provide
4 telecommunications services in South Carolina.

5 **Q. How will residents of South Carolina benefit from Comtel's services and presence**
6 **in South Carolina?**

7 A. Grant of Comtel's Application will enable the seamless continuation of
8 telecommunications services to the VarTec Companies' existing South Carolina
9 customers. By allowing Comtel to assume control of the VarTec Companies' assets and
10 to obtain the necessary authorizations to provide telecommunications services in South
11 Carolina, existing customers will have access to the services they enjoy today as well as
12 the potential for expanded service offerings going forward. Grant of this Application and
13 consummation of the transaction will greatly increase the financial viability of the VarTec
14 Companies' products and services. Moreover, Comtel's entry into the
15 telecommunications marketplace within South Carolina can be expected to serve the
16 consumers by stimulating increased competition. Effective competition has the net
17 economic impact of lower consumer prices, combined with the introduction and
18 availability of more consumer products and services.

19 **Q. Why is the company seeking an exemption from maintaining records in**
20 **South Carolina?**

21 A. Comtel requests a waiver of the requirements of 26 S.C. Reg. 103-610 that a carrier
22 keep all records required by the Commission's rules and regulations within the State of
23 South Carolina. Since the Company's operations center is in Texas, maintaining its
24 books and records in South Carolina would be unduly burdensome. Comtel has a
25 registered agent in South Carolina and will bear any costs associated with the
26 Commission's inspection of its books and records.

Comtel also seeks an exemption for any policies that might require a carrier to maintain its financial records in conformance with the Uniform System of accounts. As a competitive carrier, Comtel maintains its books in accordance with Generally Accepted Accounting Principles; and therefore, does not possess the detailed cost data required by USOA.

Finally, Comtel requests a waiver of the 26 S.C. Regs. 103-631 requirement that it publish a telephone directory. We will make arrangements to ensure that our customers' names are included in the directories published by the appropriate incumbent local exchange area.

IV. ACQUISITION OF ASSETS OF THE VARTEC COMPANIES

Q. Please briefly describe the Applicant's corporate structure.

A. Comtel is a limited partnership organized in the State of Texas.

Q. Please describe the Applicant's relationship with its partners.

A. Comtel's general partner, Comtel Assets Inc., is a Texas corporation that owns 1% of the equity of Comtel. Comtel's limited partner, Comtel Assets Corp., is a Delaware corporation, which owns 99% of the equity of Comtel.

Q. Can you briefly outline the asset acquisition for which the Applicants seek Commission approval?

A. Pursuant to an Asset Purchase Agreement ("APA") executed on July 27, 2005 and approved by the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas in an order entered on July 29, 2005, the VarTec Companies have agreed to sell to Comtel, and Comtel has agreed to purchase substantially all telecommunications assets and operations of the VarTec Companies, including but not limited to: 1) all telecommunications equipment 2) customer accounts and records 3) business records and 4) applicable licenses and permits. Please note that the VarTec Companies entered into the APA with Comtel Investments LLC ("Comtel Investments").

1 Comtel Investments, which is wholly owned by the same parties who own and control
2 Comtel and which has assigned its rights and obligations under the APA to Comtel as of
3 August 1, 2005.

4 **Q. What will the result of these transactions be?**

5 A. Comtel will obtain the customer base and substantially all telecommunications assets
6 and operations of the VarTec Companies in the State of South Carolina and all other
7 states in which the VarTec Companies operate.

8 **Q. Please describe Comtel.**

9 A. Comtel is a limited partnership organized under the laws of the State of Texas. Comtel is
10 in the process of obtaining authority to provide telecommunications services throughout
11 the United States and has obtained foreign qualification to do business in all states. The
12 VarTec Companies are currently authorized to provide interexchange and/or local
13 exchange telecommunications services throughout the United States.

14 **Q. Please describe the VarTec Companies.**

15 A. VarTec and Excel are corporations organized under the laws of the State of Texas.
16 VarTec Solutions is a corporation organized in Delaware. The VarTec Companies are
17 authorized under Section 214 of the Communications Act of 1934, as amended, to
18 provide, and is currently providing domestic interstate and international
19 telecommunications service throughout the United States. VarTec and Excel have
20 authority to provide intrastate, interexchange telecommunications services within and
21 throughout the United States, and VarTec Solutions is authorized to provide
22 interexchange telecommunications services within and throughout the contiguous United
23 States. VarTec and Excel are also authorized to provide competitive local exchange
24 services in within and throughout the United States, and VarTec Solutions is authorized
25 to provide competitive local exchange services in a limited number of states, although it
26 has not yet commenced providing service in any jurisdiction.

1 **Q. What impact will this transaction have on South Carolina customers?**

2 A. Customers will continue to receive competitively priced, quality, affordable
3 telecommunications services that they presently receive from the VarTec Companies.
4 Comtel will file tariffs to establish rates terms, and conditions identical to those in the
5 VarTec Companies' tariffs, thus providing a seamless transition for existing customers of
6 the VarTec Companies. The transaction will be virtually transparent to the VarTec
7 Companies' customers in terms of the services that they receive.

8 **Q. What notice will Comtel provide to South Carolina customers?**

9 A. Comtel intends to provide any required customer notice of the transfer of assets to
10 Comtel within the appropriate notice period. Such notice would take into account all
11 relevant state and federal notification and consent requirements applicable to this
12 transaction.

13 **Q. What do the Applicants propose to do with any tariffs on file with the**
14 **Commission?**

15 A. Comtel is adopting the terms of the tariffs of the VarTec Companies. If the application is
16 approved, revised tariffs will be filed with the Commission changing the company name
17 on the tariffs. The VarTec Companies will then cancel any tariffs on file with the
18 Commission.

19 **Q. How is approval of these transactions in the public interest?**

20 A. The approval of this transaction would serve the public interest, convenience and
21 necessity by enabling the seamless continuation of telecommunications services to the
22 VarTec Companies' existing South Carolina customers. By allowing Comtel to assume
23 control of the VarTec Companies' assets and to obtain the necessary authorizations to
24 provide telecommunications services in South Carolina, existing customers will have
25 access to the services they enjoy today as well as the potential for expanded service
26 offerings going forward. Due to financial restrictions, the VarTec Companies have

1 performed extremely limited marketing, product research and other customer retention
2 and acquisition efforts during 2004 and 2005. Such restrictions have minimized the
3 competitive offerings introduced to the public and limited the VarTec Companies ability
4 to invest in additional consumer service offerings. Consummation of the transaction will
5 greatly increase the financial viability of the VarTec Companies' products and services.
6 Moreover, approval of the proposed transaction can be expected to serve the public
7 interest by stimulating increased competition in the telecommunications market. As a
8 new entrant into these markets, Comtel intends to compete efficiently and effectively
9 using the well-established resources obtained through the APA. More effective
10 competition has the net economic impact of lower consumer prices, combined with the
11 introduction and availability of more consumer products and services.

12 **Q. Does this conclude your testimony?**

13 A. Yes. I would like to thank the Commission for this opportunity to provide information
14 relevant to Comtel's Application and am ready to provide any additional information or
15 answer any additional questions that the Commission may need in making its decision.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-342-C**

In Re:

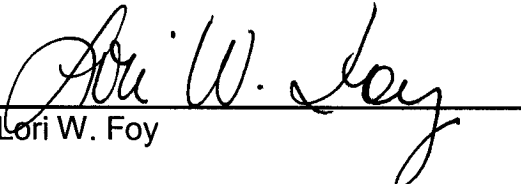
Application of
Comtel Telecom Assets LP, d/b/a
VarTec Telecom, Clear Choice
Communications, Excel
Telecommunications and VarTec
Solutions
For a Certificate of Public
Convenience And Necessity to
Provide Interexchange And Local
Interexchange
Telecommunications Services, for
Flexible Regulatory Treatment,
Alternative Regulation, and For
Approval to Acquire Certain Assets
of
VarTec Telecom, Inc.; Excel
Telecommunications, Inc. and
VarTec Solutions, Inc.

CERTIFICATE OF SERVICE

This is to certify that I, Lori W. Foy, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Testimony of Jerry Ou** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Dan F. Arnett, Chief of Staff
Nanette S. Edwards, Staff Attorney
Florence Belser, General counsel
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201

Dated at Columbia, South Carolina this 13th day of December, 2005.


Lori W. Foy